



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
1689 C Street, Room 119
Anchorage, Alaska 99501-5126



ER05/820

November 3, 2005



Ms. Helen Bass, Coastal Programs Division
Office of Ocean and Coastal Resource Management
NOS/NOAA, SSMC4 N/ORM3 Rm. 11207
1305 East-West Highway
Silver Spring, Maryland 20904

Dear Ms. Bass:

The U.S. Department of the Interior (DOI) has reviewed the Draft Environmental Impact Statement for the Office of Ocean and Coastal Resource Management's Review of Amendments to the Alaska Coastal Management Program (Draft EIS). We believe the following comments need to be addressed in the Final EIS.

Marine Mammals

Section 6.1.6, Marine Mammals. The discussion of the three marine mammal species (which include six stocks), which are trust resources managed by the U.S. Fish and Wildlife Service (FWS), needs to be expanded in the Final EIS so it is consistent with the discussion of marine mammals (e.g., the status of each stock) that are trust species under the responsibility of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration-Fisheries. The expanded section needs to identify which stocks of which species are increasing, decreasing, or stable.

Section 6.1.6.1, Polar Bears. While the Draft EIS mentions some of FWS's work with Russia with respect to cooperative management of polar bears, the Final EIS needs to be revised to also include discussions of FWS's long-standing work with Canada and with the U.S. Alaska Nanuq Commission as well as with Canada's First Nation peoples on managing subsistence use of the shared polar bear stock of the Beaufort Sea.

Section 6.1.6.2, Sea Otters. As written, the Draft EIS notes that sea otters have recently been designated a threatened species under the Endangered Species Act, implying that all sea otters in Alaska were included in that designation. The Final EIS needs to be revised to specify that only the Southwest Alaska stock of northern sea otters was listed; the Southeast and Southcentral stocks were not.

Subject: ACMP comments
From: Sandy Harbanuk <sandyharb@ak.net>
Date: Mon, 07 Nov 2005 19:28:32 -0900
To: Helen.Bass@noaa.gov

Dear Ms Bass:

Please accpet my comments regarding the DEIS for the ACMP. I am submitting them on November 7, 2005, as specified as the last date for submittal in the announcement on the ACMP website and on the related OCRM link.

I certainly wish that there had been a 90-day comment period since for those of us working on coastal district plans it is a hardship to review and comment on a document that was only received in the mail 30 days into the 45-day comment period. If a documnt is truly available in a reasonable time on the web, it should be published as web-only and interested parties should be notified of that fact.

Sandy Harbanuk
Juneau, Alaska

ACMP DEIS Comments.doc

Content-Type: application/msword
Content-Encoding: base64

Julie Hammonds

**3535 W. Monte Cristo #127A
Phoenix, AZ 85053
(480) 332-0183**

Nov. 6, 2005

Ms. Helen Bass
Coastal Programs Div.
Office of Ocean and Coastal Resource Management
NOS/NOAA
SSMC4 N/ORM3 Rm. 11207
1305 East-West Highway
Silver Spring, MD 20904

RE: Draft EIS on OCRM's Review of Amendments to the Alaska Coastal Management Program

Dear Ms. Bass:

I am writing to comment on the EIS named above and to request that a revised EIS be prepared before OCRM selects an alternative for action.

Though I now live in Arizona, from 1997 to 2001 I worked as a coastal district coordinator for the State of Alaska, Division of Governmental Coordination. In that capacity, I was responsible for reviewing coastal district programs on behalf of the state. I also wrote a guidance manual on coastal district planning. From 2004 to the present, I have remained involved in Alaska's coastal program as a consultant assisting districts to revise their plans to meet the state requirements enacted in the past few years. Before working for the ACMP I was a land use planner in private practice in California. So, I have written and commented on environmental documents for many years and am very familiar with Alaska's old program and its newest incarnation.

I was shocked to read that the preferred alternative presented by OCRM is to approve the state's revised program, despite the EIS's acknowledgement of environmental justice issues and harm to subsistence uses and activities vitally important to Alaska Natives. I was also surprised to see that OCRM considers approval of a revised ACMP that centralizes environmental decision making at the state level to be a decision that will have neutral physical and socio-economic effects. This could not be farther from the truth.

Reduced Local Involvement in the ACMP Will Harm the Coastal Environment

The EIS acknowledges that the revised ACMP "shifted the responsibility for program management from shared local and state responsibility to primarily state responsibility." In other words, it intentionally reduces local involvement in state and federal consistency review of projects proposed in Alaska's coastal communities.

If the ACMP goes away, as the EIS envisions under alternatives 2 and 3, one of the “negative impacts on the physical and socio-economic environment” is that federal consistency decisions would no longer be made. The EIS says that “the result may be physical deterioration of natural resources... and of the management of important coastal uses...”. (EIS, Section 7.3.2)

If this is a reasonably foreseeable outcome when there is less state and local involvement in federal decisions, why is it not reasonably foreseeable that less local involvement in state decision-making would have a similar effect? The EIS seems to claim that, while reduced local and state involvement in federal decisions will the environment, reduced local involvement in state and federal decisions somehow won't. This is neither logical nor correct.

A revised EIS should be prepared to clarify this point. I believe that an intellectually honest assessment would state that, just as reduced local and state involvement in federal decisions results in reasonably foreseeable harm to the environment, so does reduced local involvement in state and federal decisions, especially in a land as vast as Alaska.

Why Reduced Local Involvement Will Harm the Coastal Environment

Does the State of Alaska have sufficient resources, organization and authorities for managing its coastal zone, such that reduced local authority and involvement in the ACMP does not constitute a significant adverse environmental impact of the revised ACMP if federally approved under the preferred alternative? The answer is NO.

Alaska is about the size of 1/3 of the contiguous United States put together. Its bureaucracy is centered in Juneau, a small town on the remote Southeast coast of the state. The state's ability to manage projects affecting, let's say, Kotzebue, in the far northwest section of the state, has always been minimal and remains so today. DNR does not have an office or staff in Kotzebue to oversee projects being permitted there. This is just one example, but its truth is undeniable. Local people know the most about potential project impacts and bear the fiscal and environmental costs of irresponsible development. But under the revised ACMP, the local voice in the development of such projects is substantially reduced. And who in Juneau knows or cares what happens in Kotzebue?

In the ACMP and the EIS, the assumption is that if local communities want to direct development within their boundaries, they can simply apply zoning controls. This completely ignores the fact that only Juneau and Anchorage have the full rights and responsibilities accorded to most cities “Outside.” Elsewhere, there are vast swaths of Alaska that do not even have what in other states would be county or borough government, much less municipal authority. Under such conditions, to say (as the revised ACMP essentially does) that the state has grown up and can take responsibility for every proposed project within its borders, without local assistance, is to deny the fundamental reality of Alaska: it cannot be governed solely from Juneau. Local involvement and authority are crucial.

The EIS does not address these issues adequately. Municipal authorities in Alaska are not comprehensive enough to compensate for the reduced efficacy of the revised ACMP in terms of supporting local involvement in state and federal consistency. This reduced local involvement

will result in inappropriate and unnecessarily environmentally harmful development of Alaska's coastal zone.

The EIS says that in general, states are not required to rely on local implementation to any degree. This absolutely misses the point. In California, that's fine. Every inch of the state is covered by county government, if not by counties and cities both. A bureaucrat in Sacramento can drive to either end of the state within eight hours. In Maine, Florida, and every other coastal state, it's perfectly appropriate to let the coastal program be state-run. These states have a fraction of the land area of Alaska and far more political and physical infrastructure.

In Alaska, to let the state run the program and cut the local communities out of the process is not just bad form. It means, without doubt, that more projects that harm coastal resources will be permitted with less scrutiny. Bureaucrats in Juneau can't fly to Kotzebue, Barrow, or Ketchikan every time a project is proposed. Reduced local involvement in state and federal consistency will certainly have a negative effect on both the socio-economic environment AND the physical environment. The EIS says otherwise, and in doing so fails to address this vital point honestly and comprehensively. This is one important reason for preparing a revised EIS before selecting a preferred alternative.

Issues of Environmental Justice matter

Though the EIS does not note this fact, it is interesting that of the six districts not currently revising their plans, five are predominantly Alaska Native communities. (EIS, 7.5.2.1) Issues of environmental justice are undoubtedly in play. I strongly agree with the EIS in Section 8.4, that the revised ACMP if approved under the preferred alternative "is likely to have disproportionately high adverse economic and social impacts on minority and low-income populations in Alaska in terms of Native Alaskan communities..."

How can the federal government foresee this impact accurately, yet allow it to happen? In Section 8.4.2 of the EIS: "...by approving the amendment, NOAA is likely to be viewed by some as having taken an action that has disproportionately highly adverse effects on minority and low-income populations' self-government in the State of Alaska." Count me among those otherwise nameless "some."

The Wreckage That is Coastal Planning

I agree with everything in Section 7.5.2.1 of the EIS, particularly that the State of Alaska has made it nearly impossible for districts to produce an enforceable policy. It is a ridiculous mental exercise to try to devise a policy that both "flows from" existing state policies, and covers a matter not sufficiently covered by state and federal law. A problem not explored in the EIS is that you have to be a lawyer to discern the latter, yet the resources that have been made available to districts to revise their plans would never permit every single district to hire one. And the state has not provided an analysis of what its own laws cover, for use by districts in planning. One result, I believe (and the EIS states): "The effect of this process will most likely be the adoption of new district plans with considerably fewer district-level enforceable policies." Fewer? Try none.

It might seem that I want OCRM somehow magically to restore the good old days of the ACMP, when the old standards for district planning applied. Yes, the district planning process often took a year or more to complete, but the time frame allowed everyone who cared to participate, and followed procedures that the ordinary person could understand.

I don't want to or believe we can go back to the good old days of the ACMP. The old ACMP needed some fine tuning. In particular, the Statewide Standards needed to be revised. And in some cases, district plans needed to be updated as well.

But I can tell you from direct experience that the changes mandated in the last few years to district plans are not producing stronger plans—this is from someone who has labored night and day to understand and comply with the current district planning requirements and to faithfully serve local communities so that their revised plans will matter and be of use to them. The confusion about requirements which DNR/OPMP is constantly “clarifying,” the impossible deadlines, the severely limited resources, and the claim by Mr. Jeffers when he was the director of OPMP that for a district to survive the process with even one policy intact would represent success, all add up to one thing: the coastal communities in Alaska have spent the last two years and more than \$1 million to keep local programs alive but are emerging with plans that very few people have participated in shaping, understand how to use, or care about implementing.

I am a certified planner and this is what hurts most: Plans are supposed to come from the grassroots, they are supposed to reflect what the local people know and care about, and they are supposed to be created using processes and following requirements that the average citizen can understand. On every single count, the current ACMP district planning process fails these tests. Yet OCRM is contemplating approving the revised ACMP, including these ruinously complicated district planning requirements.

If OCRM approves the revised ACMP as it intends to do under its preferred alternative, district plans en masse will be submitted to DNR for final review only a few months later. At that point DNR, with federal approval already achieved, can do what it wants with the district plans and policies. Based on the comments that DNR/OPMP provided on the revised public hearing drafts of the district plans with which I have been involved, I can guess with reasonable assurance what DNR will do. I believe it will gut or strike most policies submitted to it by Alaska coastal communities, leaving the plans in place (so that communities will continue to receive federal dollars) but pulling the final local teeth from every approved plan.

It's interesting to me that many local communities look to OCRM to help them keep some coastal management authority against the State of Alaska's attack. The best OCRM can offer is a preferred alternative approving the revised ACMP so that the program will not sunset as the State of Alaska threatens to do. OCRM in its EIS says this would be a bad result for communities and the coastal environment, and many communities, fearing the alternative, reluctantly agree.

I want to know why anyone believes that federal dollars would continue to go to Alaska communities to implement coastal district plans that (without policies) really can't be implemented? My prediction is that, after the long and exhausting process we've gone through to revise these plans, followed by the demoralizing final act next year in which DNR will gut or

strike the policies out, nobody will have any energy or resources left to pursue what in my mind is a very actionable case in court. I fear what will happen then... everyone will realize that there's not much point in funding coastal coordinator positions in local communities to implement plans that have no real policies. So the funding will go away (or even more likely, revert to the state bureaucracy).

Coastal communities have been told that their best option is to hope the ACMP survives even in its weakened current form because the alternative would be worse. In the end, I don't think it's going to make much difference. Funds follow power: Less local authority will mean less local funding. And won't it be handy when all the coastal coordinators who know more about the state program than the wet-behind-the-ears staff of DNR/OPMP do at this point, all get de-funded and in effect, go away?

Conclusion

For the reasons stated above, I strongly disagree with the EIS' conclusion that the preferred alternative would have neutral effects on the physical environment, while alternatives 2 and 3 would have negative effects on the physical environment. Less local involvement in decision making affecting local areas will mean worse decisions for the environment.

I have thought long and hard about this and I've reluctantly concluded that there is no purpose for maintaining in force and effect such a substantially flawed program as the revised ACMP. I think that at the least, OCRM must prepare a revised EIS addressing the following concerns:

- 1) How a state as large as Alaska, with a small state bureaucracy physically isolated from the rest of the state by its location in Juneau, and without the county-level infrastructure that every other coastal state has, can change its program from one that combines state and local implementation to one that is almost exclusively state-run (especially if few district policies are approved) and not experience significant adverse effects to its coastal habitats and to important coastal uses such as subsistence?
- 2) How a program that leaves five predominantly Native Alaskan communities behind and results in severe effects on subsistence can be approved?

If you cannot prepare a revised EIS addressing these concerns within the timeframe arbitrarily mandated by the State of Alaska, then let the state sunset its program or change its laws. I must reluctantly conclude that loss of the Alaska program as currently conceived would be no great loss: The physical environment will suffer rampant harm under the state's full control without local input to correct the most egregious decisions, and the socio-economic environment for Alaska's coastal communities has already been grievously hurt by the state's "difficult to work with, unclear, time and resource-intensive, and confusing" new district planning guidance (EIS, 7.5.2.1). It can't get any worse. Fix it or let it die and let's move on.

Sincerely,

Julie C. Hammonds, AICP

Subject: ACMP DEIS Comments

From: "Bob Shavelson" <bob@inletkeeper.org>

Date: Mon, 7 Nov 2005 17:50:10 -0900

To: <john.king@noaa.gov>

CC: <Helen.Bass@noaa.gov>, <senator_gary_stevens@legis.state.ak.us>, <Senator_Johnny_Ellis@legis.state.ak.us>, <Rep_Ethan_Berkowitz@legis.state.ak.us>, <representative_paul_scaton@legis.state.ak.us>

Dear John –

Attached please find comments on the draft EIS for the proposed changes to the Alaska Coastal Management Program, from people and groups representing thousands of coastal Alaskans.

The Alaska Legislature last session set a sunset date of May 2005 for the ACMP specifically so it could address any outstanding issues during the upcoming legislature. The Murkowski Administration put OCRM into an untenable position by forcing OCRM to rush through the draft EIS. As a result, the document is seriously flawed and legally suspect. We urge you to revise the EIS – and to reject the proposed ACMP changes – until both comport with federal law.

Thank you for your attention to this matter and please feel free to contact me with any questions.

Bob Shavelson
Cook Inlet Keeper
P.O. Box 3269
Homer, AK 99603
p.907.235.4068 ext 22
f. 907.235.4069
c.907.299.3277
bob@inletkeeper.org
www.inletkeeper.org

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Mark Luttrell
Eastern Kenai Peninsula Environmental Action Association

Chief Pat Norman
Native Village of Port Graham

Buck Lindekugel
Southeast Alaska Conservation Council

Peg Tileston
Alaska Resident

Cc: (VIA EMAIL ONLY)
Helen Bass, NOAA/OCRM
Representative Paul Seaton
Representatives Ethan Berkowitz
Senator Gary Stevens
Senator Johnny Ellis
Alaska Coastal District Association

Section 6.1.6.6, Pacific Walrus. The section on Pacific walrus in the Final EIS needs to be expanded so it is consistent with the other marine mammal species descriptions. For example, in the first paragraph on page 53, reference is made to a 1997 Cooperative Agreement between the FWS and the Alaska Eskimo Walrus Commission. While the statement in the Draft EIS is accurate, it is incomplete since the 1997 agreement was the first of a series of annual agreements that have been signed from 1997 through the current year. The Final EIS should reflect this and other pertinent information for Pacific walrus.

Endangered Species Act

The FWS has reviewed the "Endangered Species Act-Section 7 Consultation Draft Biological Effects Evaluation (Evaluation)," submitted to Judy Jacobs at FWS via e-mail on October 7, 2005. While this Evaluation corrected inaccuracies with regard to endangered species effects described in the Draft EIS, relevant language in the Final EIS needs to be revised to be consistent with the Evaluation.

It is important to note that specific plans for all major projects affecting coastal areas in Alaska will still be required to undergo Endangered Species Act Section 7 consultation review with FWS, due to Federal funding or permitting requirements. This will include, for example, projects under the jurisdiction of the U.S. Army Corps of Engineers, the Environmental Protection Agency, and the Denali Commission. The FWS concurs with your conclusion that the proposed revisions to the Alaska Coastal Management Program are not likely to adversely affect any listed endangered or threatened species in Alaska.

We appreciate the opportunity to provide comments on the Draft EIS. If you have any questions regarding our comments, please contact Mary Lynn Nation, Anchorage Fish and Wildlife Field Office, at (907) 271-3053.

Sincerely,

A handwritten signature in black ink, appearing to read "Pamela Bergmann". The signature is fluid and cursive, with the first name "Pamela" and last name "Bergmann" clearly distinguishable.

Pamela Bergmann
Regional Environmental Officer - Alaska



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue
Seattle, WA 98101

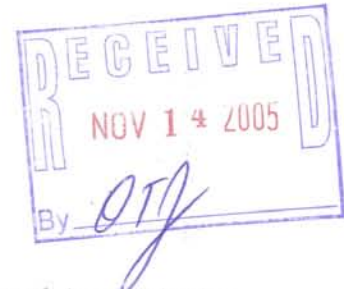
November 8, 2005

Reply To

Attn Of: ETPA-088

Ref: 05-051-NOA

Helen Bass
Environmental Protection Specialist
National Oceanic and Atmospheric Administration
OCRM/CPD, N/ORM3 Station 11207
1305 East-West Highway
Silver Springs, MD 20910



Re: Draft Environmental Impact Statement for the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management's Review of Amendments to the Alaska Coastal Management Program

Dear Ms. Bass,

The U.S. Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (EIS) for the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management's (OCRM) Review of Amendments to the Alaska Coastal Management Program, according to our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Our review of the Draft EIS considers both the expected environmental impacts of the project and the adequacy of the EIS in meeting the procedural and public disclosure requirements of NEPA.

The EIS was prepared to inform the review and action OCRM must take regarding Alaska's amended Coastal Management Program in response to changes proposed by Alaska. The State adopted legislation and regulations and made amendments to its federally-approved Coastal Management Program in order to improve the timing and predictability of its consistency review process, reducing duplication of permit review with broadly defined statewide standards, and provide certainty for private capital commitments. These legislative actions shifted responsibility for program management from shared local and state responsibility to primarily state responsibility, with a more limited role for local participation.

The Draft EIS considers three alternatives. Under Alternative 1, which is OCRM's Preferred Alternative, OCRM would approve the Alaska program amendment, thereby incorporating the amendment into the federally-approved ACMP. Alternative 2 is the "no action alternative" under which the OCRM would take no action, or delay its action. Under Alternative 3, OCRM would deny the amended program, determining that it does not meet the requirements of the federal Coastal Zone Management Act and would return the amendment to the state for reconsideration. Recently enacted Alaska state law [Senate Bill (SB) 102] requires that OCRM complete the NEPA process and approve the state's revised ACMP before January 1, 2006 or the ACMP would be repealed and terminated. Therefore, the three alternatives are, in effect,

reduced to two since the impacts from Alternatives 2 and 3 would be the repeal and termination of all of the ACMP standards, district programs, the federal consistency provisions, and shared federal/state funding under the Coastal Zone Management Act.

Based on our review, we have rated the Draft EIS and Preferred Alternative as EC-2 (Environmental Concerns, Insufficient Information). This rating and a summary of our comments will be published in the *Federal Register*. A summary of the rating system we used in conducting our review of the Draft EIS is enclosed for your reference.

EPA is concerned about the potential negative impacts to biological, cultural and subsistence resources and subsistence users in coastal communities due to the limited range of alternatives analyzed, lack of a cumulative effects analysis, environmental justice concerns, and the lack of documentation of effective government to government consultation with affected Alaska Native tribes. We are also concerned about the compressed schedule for public review of the Draft EIS and subsequent production of the Final EIS.

LIMITED RANGE OF ALTERNATIVES

EPA understands that OCRM's options and processes are constrained by the time limits imposed by State law. However, the result is a constrained NEPA process that curtails the ability to consider a full range of reasonable alternatives that would potentially be of greatest benefit to the program. The State of Alaska's proposed program amendment under review by OCRM includes a complex variety of proposed changes to the ACMP, which have occurred over the past few years. Additional alternatives could be developed by looking at and analyzing the proposed changes, alone and in combination, focusing on specific demonstrated weaknesses, redundancies, or vagaries in the existing program that should be changed while retaining the strengths and benefits of current enforceable local CMP policies. Analysis of a wider range of alternatives would allow coastal districts and communities and the decision maker to determine how state and federal laws and regulations, statewide standards, and guidelines could provide adequate protection of environmental, cultural and subsistence resources in the absence or reduction of enforceable coastal district policies.

CUMULATIVE IMPACTS ANALYSIS

The Draft EIS concludes that negative impacts to subsistence resources and subsistence lifestyle may result from the Preferred Alternative, and that this conclusion is based on cumulative effects. However, the Draft EIS does not present a cumulative effects analysis that describes the past, present and reasonably foreseeable future actions and the potential impacts to subsistence resources and lifestyles, and does not include mitigation measures to avoid or minimize the adverse impacts. We recommend that the Final EIS include an assessment of cumulative impacts that may result from implementation of the amended ACMP, and that the adverse effects attributable to this action be mitigated.

ENVIRONMENTAL JUSTICE

The EIS discusses the analyses performed to identify low income and minority communities that would be impacted by the Preferred Alternative and concludes that some of these communities will receive disproportionately high adverse impacts. In particular, approval of the ACMP program amendment would have disproportionately high adverse impacts on

subsistence resources of Native Alaskan communities. In addition, under the proposed action, districts will no longer have the ability to negotiate with project applicants to provide mitigation for negative impacts to subsistence resources. Subsistence is given special consideration in determining the requirements for, and evaluation of, disproportionate impacts. The Draft EIS does not describe how potential negative impacts to subsistence resources would be avoided or mitigated by implementation of the amended ACMP. EPA recommends that the Final EIS include a discussion of mitigation measures that will be implemented to avoid or minimize adverse impacts to subsistence users in affected communities.

EPA commends OCRM for holding scoping meetings in Barrow and Juneau during the EIS scoping process. However, the DEIS does not discuss what was done to achieve meaningful involvement from low income and minority communities that will be disproportionately adversely impacted. The EIS needs to demonstrate that communities bearing disproportionately adverse effects have had the opportunity to provide meaningful input into the decisions being made about the CMP amendment. The EIS needs to describe what was done to inform the communities about the proposed action and the potential impacts it will have on their communities (e.g., notices, mailings, fact sheets, briefings, translations), what input was received from the communities, and how that input was utilized in the decisions that were made and described in the EIS.

TRIBAL CONSULTATION AND COORDINATION

In the Draft EIS, OCRM states that they will establish a schedule to meet with Native Alaskan governments during the Fall of 2005, but there is no description of the government-to-government consultation that was conducted during development of the Draft EIS. EO 13175 recognizes the unique legal relationship the United States has with Indian Tribal governments (note that EO 13084, referenced in the DEIS was revoked and replaced with EO 13175 in November of 2000). The EO requires all federal agencies to establish regular and meaningful consultation and collaboration with tribal officials and to strengthen the United States government-to-government relationships with Indian Tribes. EPA recommends that the Final EIS include a discussion of government-to-government consultation efforts and outcomes, and describe how results of the consultation efforts contributed to the EIS decisions.

PUBLIC PARTICIPATION AND EIS SCHEDULE

While we understand the scheduling constraints, EPA is concerned that the tight schedule for development of the EIS inhibits public participation and the ability to thoughtfully consider public comments and respond to input while developing the EIS. Based on our review of the Draft EIS, it is difficult to determine how OCRM received, evaluated and responded to public scoping comments during the development of the Draft EIS. OCRM's schedule indicates that following the close of the Draft EIS comment period on November 7, 2005 a final EIS will be issued on November 18, 2005 and followed by a Record of Decision (ROD) on December 28, 2005. This leaves very little time to evaluate and respond to public comments on this Draft EIS in accordance with 40 CFR 1503.4 and produce a Final EIS that considers those comments, particularly given the complexity of the issues and the significant changes to the Alaska CMP that are proposed for review and comment.

We appreciate the opportunity to comment on the Draft EIS. If you have any questions or would like to discuss any of our comments, please contact Colleen Burgh in our Alaska Operations Office at (907)271-1481 or by email at burgh.colleen@epa.gov.

Sincerely,



Christine Reichgott, Manager
NEPA Review Unit

Enclosure

**U.S. Environmental Protection Agency Rating System for
Draft Environmental Impact Statements
Definitions and Follow-Up Action***

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.

Glenn Gray and Associates
POB 33646
Juneau, Alaska 99803
(907) 789-7822 glenn@glenngray.net

November 7, 2005

Ms. Helen Bass
Office of Ocean and Coastal Resource Management (OCRM)
NOA/NOAA, SSMC4 N/ORM3 Room 11207
1305 East-West Highway
Silver Spring, MD 20910

Submitted Via Fax: 301-713-4367

Dear Ms. Bass:

As requested, I have attached my testimony presented at last week's hearing on the Alaska Coastal Management Program (ACMP) held in Anchorage. These comments supplement that testimony.

I understand OCRM's interest in meeting the January 1, 2006 deadline imposed by the Alaska State Legislature in SB 102. This deadline, however, should not be an excuse for preparing an inadequate environmental impact statement (EIS). Regardless of a state-imposed deadline, OCRM must still meet the requirements of the National Environmental Policy Act and the Coastal Zone Management Act.

As stated in my testimony, it would be difficult, but possible to complete a more adequate analysis of the impacts of the proposed changes to the ACMP. This analysis could be done by reading the Alaska Department of Natural Resources (DNR) comments on the public hearing drafts of the coastal plans. I believe that an analysis of these comments, along with the discussion in the DNR description of the changes in the amendment request, will demonstrate that there will be significant impacts to coastal resources and uses from these changes. From my nearly 30 years of experience in natural resource management in Alaska, I am convinced that state and federal laws do not adequately address the protections for coastal resources and uses covered by the district enforceable policies and the former statewide standards. I believe OCRM will come to this same conclusion once it completes a more adequate analysis.

At some point, the benefits of continued funding for the ACMP will not be justified. From my experience, Alaska has fewer environmental laws than any other coastal state. It has depended on the ACMP, especially the statewide Habitats standard, for many years. With the changes to the statewide standards and enforceable policies, Alaska will no longer have adequate protections for coastal resources and uses.

Ms. Helen Bass

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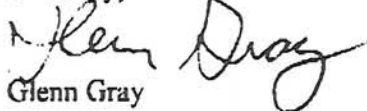
November 7, 2005

As mentioned in my testimony, the effects of approving the ACMP will have nationwide significance. If OCRM approves the changes to the ACMP, it will set a precedent for approving changes to other coastal programs. The final EIS should include an analysis of the cumulative effects of approving the ACMP to the overall goals of the Coastal Zone Management Act.

Once OCRM reevaluates the effects of the changes to the ACMP, it should consider how these changes affect the approvability of the ACMP under the criteria in federal coastal management regulations.

Again, I appreciate the challenges presented to OCRM by the legislature's deadline. A strong message from OCRM, however, will provide the national leadership that has been such an important part of the coastal management program.

Sincerely,


Glenn Gray

**Alaska Coastal Management Program EIS Hearing
November 1, 2005 Anchorage Hearing**

Testimony of Glenn Gray

My name is Glenn Gray, and I have been involved with the Alaska Coastal Management Program for 13 years. I am currently a consultant working on seven coastal district plans, but today am representing myself.

I will begin by thanking OCRM for coming to Alaska to hold these public hearings. I have great respect for the federal coastal management staff, their leadership and their promotion of coastal management throughout the U.S.

That said, I am very disappointed in the content of the draft EIS. I am not surprised at the small turnout for today's hearing. In fact, I debated whether to testify. By all appearances, the EIS is only a justification for a decision already made. The finding that there would only be neutral overall effects of the ACMP changes is not supported by fact. I find it puzzling that the EIS could find that there will be impacts to environmental justice, but no socioeconomic impacts. Clearly, these changes would not be promoted by the current administration and big business if they had only neutral effects.

The draft EIS does not meet the intent of the National Environmental Policy Act, or NEPA for short. It does not include an adequate analysis of effects of the proposed changes, including cumulative impacts, and it does not analyze sufficient alternatives as required by federal regulations.

The EIS is based on a false premise. In the introduction to yesterday's hearing, staff said that "OCRM can't assume that there will be less coverage under the new ACMP." By the same token, OCRM should not assume that there will be adequate coverage. Rather than assume anything, OCRM is required to do a thorough analysis of the effects of the changes.

I agree that it is difficult to determine the effects of the ACMP changes, but it is possible to do so. Many aspects of the changes are already being implemented.

Such an analysis could include a three-step process. First, the changes to the program would be clearly analyzed using the Amendment and comments by state agencies on the draft coastal district plans. Second, the effects of the changes would be evaluated. In order to accomplish this step, it would be necessary to analyze which enforceable policies are no longer approvable. Third, a "gaps analysis" would be completed to determine which matters are no longer adequately addressed by the ACMP or other state and federal law.

It is my opinion that because Alaska has depended on the ACMP for nearly 30 years, it was not necessary to enact environmental laws common to most other coastal states, such as growth management or a "little NEPA" laws. For example, some state agencies have depended on the ACMP so much that they have no requirement for public noticing their permits.

I urge OCRM to slow down the EIS process and do it right. The final EIS should include a more complete analysis of the effects of these changes, including OCS reviews. The analysis should address other reasonably

foreseeable effects, such as the provision currently before Congress that would exempt Alaska from review of certain federal activities. It would also include an evaluation of the current proposal to reallocate funding among the coastal districts.

If the final EIS includes a finding of neutral impacts, OCRM will be saying that the effects to low income and minority populations, identified in the EIS, are not important. It will be saying that the impacts to subsistence and subsistence resources are mitigated by other matters. By approving the proposed changes, OCRM will be saying that the previous program, that it funded for many years, was not necessary. Lastly, by approving these changes OCRM will be sending a message to other states that they can decimate their coastal programs and still get federal funding. The potential effects of approving these changes have nationwide significance.

This concludes my testimony. Again thank you for the opportunity to testify.

November 7, 2005

Ms Helen Bass
Coastal Programs Division
Office of Ocean and Coastal Resource Management
NOA/NOAA
SSMC4 N/ORM3 Room 11207
1305 East-West Highway
Silver Spring , MD 20910

VIA Email

Dear Ms Bass:

re: Comments on the Draft Environmental Impact Statement for the Office of Ocean and Coastal Resource Management's Review of Amendments to the Alaska Coastal Management Program

Thank you for the opportunity to comment on the above matter. The OPMP website and link to OCRM stated that comments are due no later than November 7, 2005, but did not state a time deadline; I assume that midnight is the end of November 7. I offer the following comments:

1/ I urge you to select Alternative 3 and to request that the State of Alaska undertake a sincere and meaningful public process to amend the ACMP to best protect the human and nonhuman natural resources of Alaska's coastal zone while providing for reasonable development.

In January, 2003, after a three-year public process to achieve the goal mentioned in the last paragraph, a set of thoroughly reviewed and approved regulations were set in place. At that point the Governor's chief of staff assembled the statewide staff of the ACMP and informed them that the new administration intended to scrap the ACMP as it had recently been amended and to instead design an ACMP that would meet the most minimal threshold program that OCRM would approve. He told the assembled staff that the coastal districts would not complain because so long as they got their federal funds they would not care about the quality of the program. I was a staff member at that time and was present as the chief of staff explained the administration's intentions.

The amended program is deficient in many respects and does not meet the minimum approval threshold that OCRM's guidelines require. The program does not even meet the publicly stated goals of the current administration: the policies submitted for OCRM's approval are not only not "less susceptible to subjective interpretation," but the interpretation continues to shift and change and does not provide predictability for project applicants. In their mania to be non-duplicative, the Office of Project Management and Permitting (OPMP) has over-interpreted the breadth and depth and level of detail

provided by many federal and state statutes and regulations. The DEC carve-out has created confusion in the consistency review process – on November 2, 2005, the Project review Supervisor for the Southeast Alaska OPMP office told me that the agency has not yet determined how the scope of a project should be determined and described when a DEC permit is described but other permits are needed as well. The DEC carve-out became effective during 2003. The program is inflexible and amorphous – an impossible combination for the agency staff and for applicants.

The DEIS is deficient in failing to adequately analyze the relationship between the ACMP and other statutes and regulations and in failing to wait for the program to be fully and completely – and finally – described before undertaking the EIS.

2/The requirement to designate areas for some standards in order to apply policies to those particular topical areas is extremely problematic. The designations do not allow for change or adaptation and create artificial barriers around pieces of land. There has been utter confusion in the directions from OPMP for establishing such areas – ridiculous requirements to separately designate each berry patch and hunting or fishing grounds for some separate species while allowing customary and traditional uses to be lumped together. Agency staff has required some districts to present “clear and convincing evidence,” a trial standard, to support “designations,” while requiring less of other plans.

At the November 2 – 4, 2005, ACMP workshop in Anchorage, OPMP staff introduced a new concept for designated areas. As written, the designated areas standards freeze the program in time and do not allow any flexibility whatsoever. As described by OPMP staff last week, the state may designate subsistence use areas and natural hazard areas “on the fly,” i.e. after an applicant has submitted a CPQ to start the consistency review process. This is contrary to what is required by the regulations and would require a “stop clock” or a delayed start to the review while new designated areas are delineated, described and justified in the lengthy justification process recently developed by OPMP. This would amount to establishing regulations for individual projects, by project, delaying the consistency review, delaying the start of the project, removing predictability, and requiring that an applicant accept all of these special conditions and effects. These areas would be arbitrary, subjective decisions by OPMP staff.

OPMP stated that these “state-designated” areas would not be entered into any sort of record since they would be project-specific and impermanent. There is no provision for the temporary designations in the regulations, but OPMP is advertising this as a carrot to districts.

The only sensible approach for the state and coastal districts regarding standards is that they be – standard. And standardly applied. Subsistence is broadly practiced across a substantial area of Alaska’s coastal zone. Whatever affects subsistence resources affects subsistence uses – development, climate change, relocation of entire communities due to coastal erosion, species decline, etc. Subsistence uses follow subsistence resources. The standard as written will have a negative impact on resources and uses of the coastal zone.

The natural hazard standard fails to even mention permafrost and the effects of a warming climate on same. Since so much of Alaska is covered by continuous or discontinuous permafrost, the changes that are taking place to it are causing natural hazards in many places and are very unpredictable – and undesignatable.

The habitat standard that leaves out the living biota is a huge deficiency in the amended program. By forcing designations rather than simply applying reasonable standards to development in the coastal zone, OPMP is making unnecessary work for districts and failing to provide predictable protection for coastal resources and uses across the board.

The DEIS is deficient in failing to adequately analyze the effects of the designated area requirements and assuming that it is too difficult to determine the ramifications of this policy.

3/The Wade Hampton Census Area and accompanying socioeconomic data is missing from the chart on page 110 of the DEIS.

4/Page 149 of the DEIS states that there will be a positive effect from Alternative 1 on the permitting process by making it more predictable and transparent. If the OPMP's recent decision that area designations can be made "on-the-fly" during a review is now part of the ACMP, then districts will be obliged to invoke this option frequently and cloud the transparency and upend the predictability of the State permit process.

5/Page 151- the comments in #4 apply to the time limitations and certainty for consistency reviews. (This decision is an important one – coastal districts were relieved to learn that they will be able to petition the state to make up for the deficiencies in funding and time to do all the mapping and justification that OPMP is layering onto the process for amending their plans by creating new designated areas "on-the-fly." It may have affected comments submitted in response to this EIS process after the workshop of Nov. 2- 4.)

6/The DEIS is especially deficient in failing to accurately evaluate the effects of limiting subsistence policies by coastal districts. The Alaska department of Fish & Game is responsible for allocating resources for subsistence uses; they have no permitting authority for policies to be applied to individual projects. Coastal districts need to have this authority for such an essential and home-grown area of traditional rural life.

7/The OPMP regulations are stultifying and the interpretations by OPMP of the vastly reduced AMP are ever-changing, confusing and overreaching.

Thank you for this opportunity to comment. A better public process with more opportunity for input, adequate time for revisions and decisions, and actual acceptance that others than the Administration and large mining and oil and gas developments have a stake in this land of coast would have served the public much better than the sham of fixing the regs and interpretations around the policy.

Sincerely,

Sandy Harbanuk
604 Fourth Street
Juneau, Alaska 99801
907/586-2207